IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR

WRIT PETITION NO :9042 of 1994

Dated: 12th July 2006.

Between:

Sadanala Sathiraju (died) and his LRs.

..... PETITIONERS

AND

Government of Andhra Pradesh, represented by its Secretary, Revenue (Assignment I(2) Department and others

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

W.P.NO.9042 OF 1994

ORAL ORDER:

The original petitioner died during the pendency of the writ petition. Petitioners 2 and 3 were brought on record as legal representatives of the original petitioner as per Court order dated 06-12-2004 in W.P.M.P.No.24337 of 2004.

The original petitioner claims that he had been cultivating an extent of Ac.4-93 cents of land in Sy.No.254/16 of Patavala village since 1969. The petitioner described himself in the affidavit filed in support of the writ petition as a Harijan. He therefore, made a representation to the authorities that the abovementioned extent of land, be assigned to him. The State, on a consideration of such representation, assigned the land in favour of the petitioner. The process of assignment is described in the revisionary order dated 06-04-1988 of the 2nd respondent and the same reads as follows:

> " The Revenue Divisional Officer, Kakinada in his L.Dis.9577/74, dt 31.12.74 submitted proposals for conversion of the land in question to assed waste stating that Sri Sadanala Sathiraju of Patavala village has applied for assignment of Ac.4.74 in S.No.254/16-B in Patavala (v) that the total extent of Ac.7-93 in S.No.254/16 stands classified as burial ground and it was under the encroachment of Sri S.Sathiraju for the past 10 years, that he has been cultivating the lands with wet paddy, that the encroachment was

> treated as objectionable upto the end of F.1383 and that afterwards it was treated as unobjectional as the remaining extent of Ac.3.15 was considered adequate for the needs of the burial ground.
>
> The Collector, East Godavari district in his R.Dis.3635/79, dated 9.7.75 ordered conversion of the land from burial ground poramboke to assessed waste for eventual assignment to landless poor persons after evicting ineligible svai jamadars. The Collector, East Godavari District has also directed that the land should be treated as irrigable dry and that while assigning it instructions issued i n Govt Memo 1734/B2/75-1 dated 31.5.75 should be followed. However, the Tahsildar, Kakinada issued orders assigning the land to Sri S.Sathiraju who was a sitting M.L.A. by that time."

However, the 3rd respondent in the year 1979, during the course of Zamabandi, came to the conclusion that the assignment made in favour of the 1st petitioner was illegal, therefore, proposed to cancel the assignment. After an inquiry, the 3rd respondent by his Proceedings dated

30-12-1985, ordered cancellation of the patta granted in favour of the 1st petitioner. Aggrieved by the same, the petitioner carried the matter in appeal to the Government. The Government referred the matter to the 2nd respondent by its Proceedings dated 05-08-1987 and the

2nd respondent by his Proceedings dated 06-04-1988 rejected the appeal. Hence, the present writ petition.

The respondents are served and counter affidavit is filed.

The 3rd respondent while initiating proceedings for cancellation of the assignment made in favour of the 1st petitioner, eventually, came to the conclusion as follows:

> " According to Note 2(ii) of Para 2 of B.S.O15(3) the share of each member of a joint family, as also the enjoyment of the income of the joint family by applicant will be taken into consideration for deciding whether or not he is landless poor person. In this case it is not proved that he is having share in the landed property of his father. But according to the instructions of the Govt., communicated in Memorandum No.1734/B2/75-1, Revenue Department dt.31.5.1975, during the term of M.L.A. he is not entitled for grant of assignment of government land as he had a monthly income and therefore mechanically he may not fit for in the definition of a poor person. While issuing orders in Collector's R.Dis.3735/75, dt.9.7.75, a direction was also issued to the Tahsildar to strictly follow the instructions contained in the Govt. Memo. referred to above. Further the wife of the assignee was also in possession of Ac.1.96 cents in S.No.286/2 of Patavala village, as per the report of the Tahsildar in D.Dis.1929/74

> dt.13.11.1975 i.e., at the time of assignment. She was also owing house at Kakinada worth of Rs.2 (two) lakhs as reported by the Tahsildar, Kakinada."

Finally, the 3rd respondent chose to cancel the assignment made in favour of the 1st petitioner on the ground that he was not eligible for assignment of the said land, being a sitting Member of the Legislative Assembly, in view of a Government memo of Revenue Department dated 31-05-1975, and also on account of the fact that he was not landless poor as his wife was owning Ac.1.96 cents of wet land and a house worth Rs.2-00 lakhs at Kakinada.

Assignment of land, owned by the State or vested with the State, in favour of individuals or class of persons, is a matter of policy of the State and this Court can take judicial note of the fact that for decades, the State has been assigning lands, as matter of policy, to the weaker sections of the society. The fact that the 1st petitioner belongs to the weaker section of the society is not in dispute. While assigning lands to the weaker sections of the society, the Government, obviously, laid down certain guidelines. According to the counter affidavit, by virtue of the Government memo dated 31-05-1975, sitting Members of the Legislative Assembly are not entitled for assignment of Government land. I do not propose to go into the question whether the said memo can be

classified as a policy decision of the Government or not and also that if a policy decision is to be taken, how is it required to be taken, the competency of the person or persons to take such decision, are the questions, requiring an elaborate examination. From the revisionary order as well as the order of the 3rd respondent, one of the reasons for which the assignment made in favour of the petitioner was sought to be cancelled is that he is a sitting M.L.A., at that point of time and in view of the said Government memo, referred to earlier, he is not entitled for such assignment.

This Court called upon the Government Pleader for Revenue, to produce the memo on the last occasion on

28-06-2006. Today, when the matter is taken up, the learned Government Pleader for Revenue, represents that since the said memo pertains to the year 1975 and according to the practice of the Secretariat of Andhra Pradesh, memos are destroyed five years after their issuance and therefore, he is not in a position to produce the same. If it is the established practice, I simply fail to understand how the same was placed before the

3rd respondent, after ten years of its issuance in the year 1985, when he chose to cancel the assignment made in favour of the 1st petitioner, as obviously, by then, they must have been destroyed. Therefore, I am of the opinion that reliance on the memo, which is not seen by

any one of the respondents, nor produced before the Court, is wholly illegal. The rights of a citizen, in this connection, cannot be taken away on the basis of an instrument, which does not exist on the relevant date and which cannot be produced for the scrutiny of the Court.

Coming to the second ground on which the cancellation is sought to be made is that the 1st petitioner's wife holds an extent of Ac.1.96 cents of land and a house in Kakinada Town. Once again, the State does not demonstrate as to how the property owned by the wife is a hindrance of the 1st petitioner to obtain assignment or to classify him as a landless poor person.

The Government Pleader for Revenue relies on various standing orders issued by the Revenue Board, from time to time and pointed out the definition of expression 'land less poor person', which reads as follows:

" (ii) *"Landless poor person" is one who owns not more than 2 ½ acres of wet or 5 acres of dry land and is also poor*.

Note 1:- The question whether a person is poor or not is left to the discretion of the assigning authorities. One acre of wet will be treated as 2 acres of dry land. Irrigable dry land shall be treated as wet.
Note 2:- The share of each member of a joint family as also the enjoyment of the income of the joint family by an applicant will be taken into consideration for deciding whether or not he is landless poor person. Minor sons would not however, be eligible for the grant of lands as they cannot be expected to engage themselves in direct cultivation."

Admittedly, the 1st petitioner does not own any land. The endeavor of the Government is to bring the case of the petitioner under the Note 2, extracted above. In my view, such a view is wholly erroneous. Obviously, when Note 2 refers to a share of the member in a joint family, the expression 'joint family', which is not defined in the G.O., must be understood, normally, as it is understood in the context of a joint Hindu family. Though the share of a member of a joint Hindu family is relevant in determining a person as a landless poor, the property held by the wife independently as of her own right, in my view cannot be taken into consideration in the absence of any substantial prescription by law. The above-referred Government Order does not create any such prescription.

In the circumstances, I am of the opinion that the order of the 3rd respondent canceling the assignment made in favour of the petitioner as confirmed by the 2nd respondent requires to be quashed and the same is hereby quashed.

The writ petition is, therefore, allowed as prayed for.

J.Chelameswar, J

mrk

12th July 2006.